

LFC Requester:	Theresa Rogers
----------------	----------------

**AGENCY BILL ANALYSIS
2016 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original ☒ Amendment ☐
Correction ☐ Substitute ☐

Date January 14, 2016

Bill No: HB 36

Sponsor: William "Bill" R. Rehm

Agency Code: 305

Short Title: Extending the Time Limitation for
Prosecuting Certain Crimes

Person Writing M. Anne Kelly

Phone: 222-9054

Email akelly@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

Synopsis:

This bill seeks to amend NMSA 1978, 30-1-8, regarding the statute of limitations (SOL) for crimes, to do the following:

- Increase the SOL on second-degree murder from six years to no limitation (the same as first-degree murder);
- Increase the SOL on the crimes of conspiracy and tampering with evidence to be the same as the underlying crime. That is, if the defendant is charged with first-degree murder and tampering with evidence from that murder, the statute of limitations for the tampering would also have no limitation.

The degree of felony for tampering with evidence and conspiracy charges is dependent upon the underlying crime and is charged one degree lower than the underlying crime. *See* NMSA 1978, § 30-28-2 (1963) (conspiracy) and § NMSA 1978, § 30-22-5 (1963). Thus, if one is charged with tampering with evidence in relation to a third-degree felony, the tampering would be a fourth-degree felony.

FISCAL IMPLICATIONS

SIGNIFICANT ISSUES

Criminal statutes of limitation are a matter for legislative judgment. *See State v. Kerby*, 2007-NMSC-014, ¶ 13, 141 N.M. 413 (explaining that the purpose of a criminal statute of limitations "is to limit exposure to criminal prosecution to a certain fixed period of time following the occurrence of those acts the legislature has decided to punish by criminal sanctions").

An issue may arise regarding the retroactivity of these new time periods if the act is passed. In *State v. Morales*, 2010-NMSC-026, 148 N.M. 305, the Court considered the defendant's claim that the new unlimited SOL on first-degree murder, which replaced the older SOL of 15 years for capital felonies and first-degree violent felonies, could not be applied to him because he committed his crime before the effective date of the new SOL. The Court disagreed, primarily because the original SOL had not yet run on his crime. The Court held that the

statutory amendment applied to the defendant because prosecution for his crime was not time barred at the time of the effective date of the statutory amendment. Thus, “[b]ecause a defendant does not have a vested interest in an unexpired statute of limitation, a legislative amendment extending or abolishing the limitation period does not impair vested rights, require new obligations, impose new duties, or affix new disabilities to past transactions.” *Morales*, 2010-NMSC-026, ¶ 11.

However, the result will likely be different if the original SOL has already expired. The Court specifically distinguished *Kerby* on this ground in *Morales* – “In *Kerby*, the applicable statute of limitations had expired and, therefore, the defendant's right to be free from criminal prosecution had fully vested. Under these circumstances, the statute of limitations defense is a substantive right and subsequent statutory amendments cannot be “applied to revive [the] previously time-barred prosecution.” *Morales*, 2010-NMSC-026, ¶ 17.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Aware of none.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The status quo will remain on the statute of limitations for second-degree murder, conspiracy, and tampering with evidence.

AMENDMENTS